



LOWEY DANNENBERG_{LLC}

www.lowey.com

44 South Broadway, Suite 1100, White Plains, NY 10601-4459 (p) 914-997-0500 (f) 914-997-0035
Four Tower Bridge, 200 Barr Harbor Drive, Suite 400, West Conshohocken, PA 19428-2977 (p) 610-941-2760 (f) 610-862-9777



July 17, 2019

Via ECF

The Honorable Valerie E. Caproni
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

The Honorable Alison J. Nathan
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

The Honorable Alvin K. Hellerstein
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Gamma Traders – I LLC, et al. v. Merrill Lynch Commodities, Inc., et al.*, 19-cv-6002 (AJN) (S.D.N.Y.)
Robert Charles Class A., L.P., et al. v. Merrill Lynch Commodities, Inc., et al., 19-cv-6172 (AKH) (S.D.N.Y.)
In re: London Silver Fixing, Ltd., Antitrust Litig., 14-md-2573 (VEC) (S.D.N.Y.)

Dear Judge Caproni, Judge Nathan, and Judge Hellerstein:

We represent Plaintiffs in *Gamma Traders – I LLC, et al. v. Merrill Lynch Commodities, Inc., et al.*, 19-cv-6002 (S.D.N.Y.) and *Robert Charles Class A., L.P., et al. v. Merrill Lynch Commodities, Inc., et al.*, 19-cv-6172 (S.D.N.Y.) (“*BAML Spoofing*”). We write in response to Defendants Bank of America and Merrill Lynch’s (“*BAML*”) July 12 letter and to inform the Court of the material differences between *BAML Spoofing* and *In re: London Silver Fixing, Ltd., Antitrust Litigation*, 14-MD-2573 (VEC) (S.D.N.Y.) (“*Silver Fix*”).¹

First, *Silver Fix* alleges an antitrust conspiracy among multiple banks to manipulate the daily London Silver Fix and the physical and financial derivatives markets for silver, whereas *BAML Spoofing* involves specific allegations of spoofing by *BAML*, Morgan Stanley,² and their

¹ *BAML* also seeks to relate another action: *Yuri Alishaev et al. v. Merrill Lynch Commodities, Inc. et al.*, No. 1:19-cv-6488 (S.D.N.Y.)

² We note that Morgan Stanley is not a defendant in the *Robert Charles Class A., L.P., et al. v. Merrill Lynch Commodities, Inc., et al.*, 19-cv-6172 (S.D.N.Y.) action.

The Honorable Valerie E. Caproni
The Honorable Alison J. Nathan
The Honorable Alvin K. Hellerstein

July 17, 2019
Page 2

former employees in the markets for Silver, Gold, Platinum, and Palladium futures and options on those futures.

Second, BAML's assertion that *BAML Spoofing* and *Silver Fix* "involve nearly identical transactions and events" and rely on "the criminal complaint and related investigations" is not accurate. In fact, neither the criminal complaint, nor any government investigation related to the conduct in *BAML Spoofing* was public until December 2017, months after the operative complaint was filed in *Silver Fix*.

Third, given that the facts currently alleged in *BAML Spoofing* were not before Judge Caproni in *Silver Fix*, the risk of inconsistent rulings is exceedingly low. *See Silver Fix*, 332 F. Supp. 3d 885, 925 (S.D.N.Y. 2018).

Fourth, *Silver Fix* and *BAML Spoofing* are at significantly different procedural stages. *Silver Fix* is a five-year old case, active discovery has been ongoing for nearly one year, and is scheduled to close in July 2020. Additionally, none of the Defendants in *BAML Spoofing* are currently Defendants in *Silver Fix*, nor have they produced any documents, or participated in the parties' ongoing discovery negotiations. As such, any overlap or efficiencies created by coordinated discovery would be minimal.

Finally, as currently alleged, the financial instruments impacted by Defendants' manipulation are different in each litigation. *Silver Fix* involves all contracts concerning an exchange of physical silver or a derivative instrument where silver was the underlying asset. By contrast, *BAML Spoofing* involves NYMEX platinum futures contracts, NYMEX palladium futures contracts, COMEX silver futures contracts, COMEX gold futures contracts, and options on those contracts.

Respectfully submitted,

/s/ Vincent Briganti

/s/ Thomas Laughlin